

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Committee Room 2, County Hall, Durham on **Thursday 10 May 2012 at 10.00 am**

Present:

Councillor G Bleasdale (Chair)

Members of the Committee:

Councillors J Robinson (Vice-Chair), A Bainbridge, N Foster, D Hancock, S Hugill, D Marshall, J Maslin, A Naylor, J Shiell, P Stradling, R Todd, E Tomlinson, J Turnbull and A Wright.

Apologies:

Apologies for absence were received from Councillors B Arthur, D Burn, T Taylor, L Thomson, C Woods and R Young.

Also Present:

Councillor J Blakey and A Cox.

1 Minutes of the meeting held on 19 April 2012

The minutes of the meeting held on 19 April 2012 were confirmed as a correct record and signed by the Chairman.

2 Declarations of interest

There were no declarations of interest in relation to any items of business on the agenda.

3 Definitive Map Modification Order Application to delete part of Cassop cum Quarrington Footpath no 29

The Committee considered a joint of the Head of Legal and Democratic Services and Corporate Director, Regeneration and Economic Development regarding an application to delete part of Cassop cum Quarrington, public footpath number 29 from the definitive map and statement. The application had been submitted in April 2011 by the owners of Quarrington Farm, Mssrs Johnson, who had farmed the land since 1982. The application had been accompanied with supporting evidence including correspondence between the County Council and the applicants, Country Land and Business Association, ordnance survey plans from 1857 to 2002, aerial photography from 1944, witness statements and a commentary about a survey carried out prior to the publication of County Durham first Definitive Map and Statement in 1952 (for copy see file of Minutes).

The Senior Rights of Way Officer outlined the location and layout of the footpath, explaining that the footpath was located in land belonging to two different owners. The desirability of the footpath and the argument as to whether people wanted the footpath or

not, were immaterial to the application and a specific legal framework had to be followed along with other relevant factors which had to be taken into account.

The Planning and Development Solicitor outlined the legal framework for the application which was considered under section 53 of the Wildlife and Countryside Act 1981. The act imposed a duty on the council to keep maps under continual review. The application presented to the Committee could only be determined on the application and evidence submitted.

The Senior Rights of Way Officer summarised the details of the application and informed the Committee of the background to the application and summarised evidence outlined in Appendices B to E of the report which contained copies of the application, a copy of an order to divert the footpath in 1912 to enable expansion of Bowburn brickworks, 1952 survey sheets and a map prior to the publication of the 1952 definitive map and statement, the 1979 definitive map and statement, applicants submission and responses to the consultation.

The Committee were informed that the County Council produced its first definitive map in 1952 and undertook a process of consultation exercises at the time, which included a survey carried out with the parish council of the paths considered to be public rights of way. There had been no records of any objections to the depiction of footpath 29 at that time. The definitive map was carried forward in subsequent five-yearly reviews in 1957, 1962 and 1967 and footpath 29 had been consistently shown on all of the maps.

Legislation changes in 1968 and a further review of the definitive map was undertaken in 1979, which again showed the footpath still in existence. The Committee noted that there appeared to be a slight realignment of the footpath, which had been done for no apparent reason and were informed that this could have simply been an administrative error made at the time. The path continued to cross the same two fields. The map was reviewed again in 2010 and the footpath remained in the same place as the 1979 review. The Committee also noted that in 2000 the County Council attempted to modify the aforementioned administrative error by way of an order and re-align the footpath for which there were objections at the time, which the applicants for this deletion did not agree, their view being based around the premise that there was another route, used by the public (referred to as the railway cutting route). This process never came to fruition due to the serious foot and mouth outbreak that occurred during this time and other priorities taking precedence. The Committee were also informed that the current application for consideration was not an application to realign the footpath to its pre-1979 location but an application to delete or extinguish the footpath altogether. The issue of the railway cutting route was an entirely separate matter.

Consultations had also been carried out with other stakeholders in the area including Redscape Limited, the Ramblers Association and local members who had all objected to the application to delete the path whilst the Parish Council had stated that it is unable to make a judgement on the issue. The Committee were informed of the main elements of the applicants case which included:

- lack of use since 1982
- use of another route
- taking land out of agricultural production

- errors due to 1952 survey drawn onto 1923 map
- the lack of a footpath on ordnance survey maps
- lack of a visible footpath on 1944 aerial photo
- witness statements indicating a lack of use of a footpath
- further errors due to 1952 survey drawn onto 1923 map

In each case the Senior Rights of Way officer provided a response to each point and informed the Committee that on balance, it was considered that in 1952 Cassop cum Quarrington footpath 29 already existed and was correctly depicted on the definitive map statement. The fact that an order to divert the path in 1912 indicated the existence of the footpath and the aforementioned 1952 survey provided strong evidence that the path's inclusion as a public footpath was 'unrestricted use for 20 years'.

Counsel for Messrs Johnson provided representations on behalf of Messrs Johnson, summarised the evidence to suggest that footpath 29 had been erroneously placed on the definitive map statement in 1952 as follows:-

- consideration of the deletion of footpath 29 would deprive local people of enjoying walks in the countryside given the scant evidence that the route shown on the definitive map was used by the public now or ever and that if people did use the path it was the route that followed the railway cutting (a copy of which was circulated to the Committee), with evidence to support that view;
- the committee should ask themselves if there was any evidence of no public right of way over footpath 29 and whether they were satisfied that the footpath should not have been recorded on the definitive map on its first publication in 1952;
- the evidence provided as a whole supported the Johnson's case that the footpath should not have been marked on the definitive map in 1952 and suggested that the report was "dismissive of witness evidence carefully compiled in support of the application";
- there was sufficient evidence to overturn any conclusion that the footpath was used for the whole of the 20 year period from 1932-1952;
- the witness statements provided sufficient evidence to suggest that records preceding the 1952 definitive map statement when the survey concluded that there was 'unrestricted use of 20 years' were incorrect, and that an aerial photo from 1944 showed no sign of any visible path and if the field had been used by members of the public for a significant time prior to 1952 it was reasonable to conclude that there would have been some physical evidence on the ground;
- The 1939 and 1952 maps did not show any footpath crossing the Johnsons field.

In summing up, Mr Easton commented that the report rejected the applicants' evidence incorrectly as well as relying upon an order made in 1912. No evidence to support the inclusion, based on an inaccurate survey and the reason for its inclusion was not the 1912 Order but a finding that the route had been used for 20 years and that the reasons outlined would be sufficient to allow the Committee to allow the application and delete part of footpath 29.

Councillor Foster thanked the Council and Mssrs Johnson for the representations regarding the issue and commented that the 1912 diversion order was good evidence to suggest that the path existed at that time and duly supported the recommendation detailed in the report.

Councillor Shiell echoed the comments by Councillor Foster and supported the recommendations detailed in the report adding that the 1912 diversion existed in law in 1952 and there was no doubt that the evidence to counter argue from witnesses used and ordnance survey maps could not always be relied upon.

Councillor Hugill commented that from his experiences in farming, footpaths that abutted or existed over farmed land could be hugely problematic, particularly when litter was dropped and it was perhaps obvious that the railway cutting should be used as the footpath and whilst he accepted that this was a separate issue, this matter should be looked at in due course. Councillor Bainbridge also supported Councillor Hugill's view.

Councillor Todd felt that there was no substantial evidence to suggest that the Council were inaccurate in their assessment.

Resolved:

That after due consideration of the evidence and following the representations made provided to the Committee that the application to delete part of Cassop cum Quarrington Footpath 29 be refused.